IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL SECOND APPEAL No. 68 of 1988

MUNICIPAL BOARD ANUPGARH
V/S
KISHAN LAL

2. CIVIL SECOND APPEAL No. 90 of 1988

RAM NARAIAN &ORS
V/S
KISHAN LAL & ORS

Mr. JK BHAIYA, for the appellant in CSA No. 90/88.

Mr. JASWANT MAL BHANDARI,for the appellant in CSA 68/88.

Mr. NS RAJPUROHIT for Mr. SG OJHA, for the respondent plaintiffs, in both appeals.

Date of Order : 17.10.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Both these appeals have been filed by the two different sets of defendants, against the judgment and decree of the learned Addl. District Judge, Raisinghnagar dt. 12.2.1988, reversing the judgment and decree passed by the learned Munsiff and Judicial Magistrate, Anupgarh, dt. 25.8.1986; and thereby decreeing the plaintiffs' suit for injunction, and restraining the defendants from illegally interfering with the possession of the plaintiff, "मदाखलत बेजा न करें".

The facts of the case are, that the suit was filed, originally by the two plaintiffs being Nanak Chand and Mehtab Chand, on 19.12.1979, alleging that their plot measuring 9375 sq. yards was given by the Municipality on 25.2.1959, and Patta was issued. It was then alleged that the plaintiffs have constructed a Kucha wall on the front side, and also constructed three Kucha rooms. However, on 2.12.1979 the defendants wanted to forcibly dispossess, and gave beating, for which criminal case was registered. Interalia with these averments it was prayed that the injunction be issued restraining the defendants no. 1 to 5 from illegally interfering with the possession of the plaintiff. Plaintiff Mehtab Chand died. Thereafter on 19.10.1982, an application was filed for amendment of the plaint, which application was allowed with consent of the parties on 8.11.1982, and amended plaint was filed. Therein the sons of Nanak Chand remained the plaintiff, and appropriate pleadings were taken about the plot being belonging to the plaintiffs and their father's elder brother (Tayaji) Mehtab Chand.

The defendants contested the suit, inasmuch as the defendants no. 1 to 3 filed separate written statement, and defendant no. 5 filed separate written statement. The contention of the defendant no. 1 to 3 was, that the plaintiff has not disclosed as to which were the portions of the plaintiff's father and that of his father's brother,

and that no documents had been produced in proof of having been allotted the plot, and that the plot is in possession of defendants no. 1 and 2 in equal share from 1971. Then, it was pleaded, that the Kucha Kothas have been constructed by the defendants, and are in possession of defendants no. 1 and 2. Regarding Patta it was pleaded, that the plaintiff wants to take possession by preparing a forged Patta, and therefore, dispute arose. It was maintained that the plot is in possession of the defendants no. 1 and 2. Interalia with these averments, it was prayed that the suit be dismissed. The defendant no. 5 contended that the Municipality never had the right to give Patta of 9375 sq. yards of land, and that, after 17.2.59 the rights of the Municipality to grant Patta of Abadi land were taken away. It was also pleaded, that there is no provision under the Municipalities Act for exchange of land, and the plaintiff has not established, as to which plot no.77 was of the plaintiff, and for what purpose it was taken by the Municipality, and that original Patta has not been produced. Then, certain objections about insufficiency of court fees was also taken, and it was prayed that the suit be dismissed.

After completing the trial, learned trial court vide judgment dt. 25.8.1986 dismissed the suit.

In the appeal filed against the judgment and

decree of the learned trial court, the learned lower Appellate Court reversed the findings of the learned trial court on issues no. 1 and 6, and decided the two issues in favour of the plaintiff. Likewise, finding on issue no. 2 regarding the plaintiff's possession was also decided in favour of the plaintiff. Then, issue no. 3 relating to right of Municipality to grant Patta was also decided against the defendant. Then, issue no. 5 relating to question about Patta being forged, burden whereof was on the defendant, was also decided against the defendant. Interalia with these findings, the judgment of the learned trial court was set aside, and the suit was decreed as above.

It may be noticed here, that defendant no.1 was Ram Narain, and the defendants no. 2 and 3 are the appellants no. 2 and 3 in Appeal No. 90, while defendant no. 4 against whom the suit proceeded exparte has not been impleaded as party, and Appeal No. 68 has been filed by the defendant no. 5.

During pendency of the appeals, the defendant no.1 Ram Narain expired, and since his legal representatives are not brought on record, vide order dt. 6.9.2006 the appeal was formally ordered to have abated, as against him.

Both these appeals were admitted by this Court

vide order dt. 10.4.1991, and the common substantial question of law formulated for admission of appeal is, as under:-

> "Whether the learned First Appellate Court mis-directed itself in regard to the questions of law and the finding recorded by the First Appellate Court are perverse?"

Arguing the appeals, it was sought to be contended by both the learned counsel for the appellants, in both the appeals, that the plaintiffs have not produced the Patta, and in absence of Patta, the plaintiffs could not maintain the suit for injunction. It was contended by the learned counsel in Appeal No. 90, that the defendants were in possession since 1971, and there is nothing to show as to how the plaintiffs were in possession since 1959, it was also contended that the learned lower Appellate court has decided the appeal, mainly on the ground, that Municipality did not produce the documents, and on that ground the evidence of D.W.3 was disbelieved, while no request was ever made by any of the parties, for summoning the record from Municipality, and thus, the learned lower Appellate Court was in error. It was also pointed out by the learned counsel, that the suit was originally filed by two plaintiffs Nanak Chand and Mehtab Chand, out of them Mehtab Chand had expired, and thereafter the suit could not be continued by the legal representatives of Nanak Chand

alone, and should have been dismissed as abated. Learned counsel for the appellant in Appeal no. 68 contended, that after 17.2.59, the Municipality did not retain any power to grant any Patta, and since the original Patta has not been produced, the learned lower Appellate court was in error in granting decree for injunction.

On the other hand, learned counsel for the respondent contended, that in Appeal No. 90, since Ram Narain defendant no.1 has expired, and since defendants no. 1 and 2 claimed, jointly to be in possession of the plot, to the extent of half to half, in view of the fact, that the appeal as against Ram Narain has abated, in the event of Appeal No. 90 being allowed, two inconsistent decrees are likely to come into existence; one in favour of surviving appellants, and the other having become final against the legal representatives of the deceased Ram Narain, therefore, the appeal is liable to be dismissed as a whole.

Arguing the appeals on merits also it was contended, that the application for amendment of the plaint was filed, which was allowed with the consent of the learned counsel for the parties, and regarding original Patta, application was filed on 24.1.1983 for summoning the original record, which application was allowed by the learned trial court vide order dt. 24.1.1983, but somehow

the original Patta was not summoned, but then the fact remains, that the impugned decree has been granted only for injunction, finding the plaintiff to be in possession since 1959, and no declaration of title has been given, and therefore, non production of original Patta is hardly of any consequence. Then, referring to statement of P.W.1 and 4, it was contended, that clear evidence was led on the side of the plaintiff, that land was given to the plaintiff by the Municipality, in Board meeting, in exchange of plot no.77 which was taken by the Municipality for construction of office of the Municipality, which clearly establishes that the plaintiff is in possession of the plot since 1959. Therefore, it was contended, that both the appeals are liable to be dismissed.

I have considered the submissions and have gone through the record.

Since no submission was made by either of the learned counsel for the appellants, to substantiate the substantial question of law, as framed on 10.4.1991, learned counsel were pointedly asked to substantiate the question, at least by pointing out any ground in the memo of appeal, as to how the learned lower Appellate Court misdirected itself on the question of law, and as to how finding has been claimed to be perverse, but then, the learned counsel could not point out any ground in the memo

of appeal in that regard, nor could substantiate the substantial question of law as framed. The obvious consequence is, that I am left with no option, except to answer the question as framed, against the appellants in both the appeals.

Then, instead of leaving the matter at that, I have gone through the merits of the matter also, and find, that the plaintiff's suit is a suit plain and simple for injunction, based on their possession since 1959, while the defendants no. 1 and 2 claimed to be in possession since 1971, and after appreciating the evidence of the parties, including the statement of P.W.1 and 4, it has been found by the learned lower Appellate Court, as a fact, that the plaintiff has proved to be in possession since 1959, and the defendants no. 1 and 2 have not even come with a stand, as to how did they come into possession in 1971, and thus, the story of the defendants no. 1 and 2 was disbelieved, and the stand of the plaintiffs was accepted. In my view, the finding, about plaintiffs' possession, is a pure finding of fact, and is not vitiated on any of the grounds available under Section 100 C.P.C. Therefore, on merits also, the impugned judgment and decree does not require any interference. I am also of the view, that in view of Ram Narain having expired, the claim of Ram Narain and Durjan over the plot being not with respect to specified portions of plot, but being joint, claiming each of them to be in

possession of half to half portion, on account of abatement of the appeal of Ram Narain, the Appeal No. 90 otherwise also abates as well.

Thus taken from any stand point, both the appeals have no force, and are dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/